



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Response Under 37 C.F.R. § 1.116 Expedited Procedure

Re application of: Jacques Thilly and Christian

Vandecasserie

Application No. 10/524,886

Filed: December 1, 2005

Confirmation No. 2976

For: CLOSURE SYSTEM FOR A VIAL, VIAL,
METHOD OF CLOSING AND FILLING A
VIAL AND A STAND FOR A VIAL

Examiner: James N. Smalley

Art Unit: 3781

Attorney Reference No. 8121-82019-01

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AF, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

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REQUEST FOR WITHDRAWAL OF FINALITY

The Office action dated June 23, 2009, finally rejected Applicants' Claims 14 and 15 over a newly applied reference, the application of which was not necessitated by the prior Amendment made by Applicants. Applicants also submit that the June 23, 2009, Office action is the first true rejection of these claims.

Applicants appreciate the courtesy of the Examiner in discussing the issue of the finality of the Office action with counsel on August 18, 2009. In that call, while agreeing that the newly cited reference was not applied with respect to any new feature added to Applicants' Claim, the Examiner indicated that Applicants' prior amendment of Claim 14 "changed the scope" of the claim such that any application of a new reference could be made final.

Applicants disagree and respectfully request reconsideration.

Under MPEP § 706.07(a) a second action may not be made final "where the examiner introduces a new ground of rejection that is [not] necessitated by applicant's amendment of the claims" In this case, the new ground of rejection was not *necessitated* by Applicants' Amendment. The newly applied reference was applied in view of its alleged disclosure of an angle between a stopper and a vial allegedly rendering obvious claimed angles in Claims 14 and